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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MICHAEL C.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES  
COUNTY,

Respondent;

LOS ANGELES COUNTY DEPARTMENT OF  
CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

B152116

(Super. Ct. No. CK42124)

ORIGINAL PROCEEDING; petition for writ of mandate. Thomas Grodin,  
Commissioner. Writ denied.

Eva E. Chick for Petitioner.

No appearance for Respondent.

Lloyd W. Pellman, County Counsel, and Kim Nemoy, Deputy County Counsel, for Real  
Party in Interest.

\* \* \* \* \*

This is a petition for extraordinary writ challenging the order of the juvenile court setting a hearing pursuant to Welfare and Institutions Code section 366.26.<sup>1</sup> (§ 366.26, subd. (1); Cal. Rules of Court, rule 39.1B.) We conclude that petitioner, Michael C., was not denied procedural due process and hence deny the petition.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

Michael C. is the father of three children, including eight-year-old Whitney, the subject of this petition. On April 4, 2000, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition pursuant to section 300 on Whitney's behalf. DCFS detained Whitney from her mother's custody after the police received reports of domestic violence between Whitney's mother and her male companion. At the time of the detention, Michael C.'s whereabouts were unknown.

At the detention hearing held April 5, 2000, the juvenile court ordered DCFS to present evidence of due diligence in attempting to locate Michael C., and directed that he was to have no visits with Whitney until he contacted DCFS.

At the pretrial resolution conference hearing held April 14, 2000, the juvenile court ordered Whitney detained in the home of her grandmother, and continued the matter to May 23, 2000.

On May 23, 2000, the continued pretrial resolution conference was held. DCFS submitted a report describing the efforts made to contact Michael C. DCFS reported that on May 18, 2000, a DCFS investigator discovered an open dependency case involving Whitney's two half-siblings. These children had been removed from Michael C.'s custody because he had molested an 11-year-old family member, physically abused his son, threatened his son with a knife, engaged in domestic violence, and had a history of substance abuse.<sup>2</sup> After reviewing the dependency file concerning Michael C.'s other children, the DCFS social

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> In 1995, DCFS investigated the family as a result of allegations that Michael C. had molested Whitney. The allegations were deemed unsubstantiated.

worker handling Whitney's case was able to obtain two of Michael C.'s last known addresses. DCFS also submitted to the juvenile court a document advising that a DCFS social worker had obtained Michael C.'s pager number. The social worker indicated that she spoke with Michael C. in April 2000, and left messages, the last one on May 22, 2000. Michael C. did not, however, return the calls.

On May 23, 2000, the juvenile court ordered DCFS to complete a due diligence as to Michael C. in order to properly notice him at his last known address. The matter was continued to June 23, 2000, for a further pretrial resolution conference. On June 6, 2000, a notice of the hearing was sent to Michael C. at his two last known addresses, one on Pinewood in Tujunga, and one at an address in Sun Valley.

On June 23, 2000, a further pretrial resolution conference was held. DCFS submitted a document advising the court that Michael C. had contacted a DCFS investigator by telephone on June 22, 2000, and had stated that the notice of hearing had been forwarded to his current address at 7445 Apperson Street, Tujunga. He advised that he was out of town, and would therefore be unable to appear at the hearing set for June 23, 2000. He further advised that he would return after July 10, 2000, and asked that the hearing be continued. He also stated he would appear at the next court date.

On June 23, 2000, the juvenile court appointed an attorney for Michael C., and continued the matter to July 17, 2000, for a disposition hearing. DCFS was directed to notice Michael C. for the next hearing date. On July 17, 2001, Michael C. was noticed for the July 17, 2000 hearing at the Apperson Street address he provided to DCFS in June 2000.

On July 17, 2000, the disposition hearing was held. Michael C. failed to appear. The court found that notice of the hearing had been given to all appropriate parties as required by law. The court declared Whitney a dependent of the juvenile court, and ordered family reunification for both parents, specifying that Michael C. participate in parenting classes and individual counseling. Michael C. was granted "reasonable monitored" visitation. The matter was continued to January 12, 2001, for a section 366.21, subdivision (e) hearing. DCFS failed to notify Michael C. of the January 12, 2001 hearing.

On January 12, 2001, the section 366.21, subdivision (e) hearing was held. In a report submitted for the hearing, DCFS advised that Whitney's mother had moved out of state, and that Michael C. had failed to make any contact with Whitney or DCFS. Although the social worker had attempted to call Michael C., the number had been disconnected. As a result, the social worker initiated another search for Michael C. The juvenile court found that notice of the proceedings had been given to all appropriate parties as required by law. The matter was continued to July 13, 2001, for a section 366.21, subdivision (f) hearing. Michael C. was noticed of the review hearing at the Apperson Street address.

A section 366.21, subdivision (f) hearing was held on July 13, 2001. Michael C. did not appear for the hearing. DCFS submitted a document advising that on July 7, 2001, a new social worker had been assigned to the case. In a report prepared for the hearing, DCFS made no mention of Michael C. At the request of Michael C.'s attorney, the court continued the matter for a supplemental report. The court, without objection or argument from Michael C.'s attorney, found that notice of the proceedings was proper. The court ordered that "no further notice is required for mother and father." The matter was continued to July 30, 2001.

The continued section 366.21, subdivision (f) hearing was held on July 30, 2001. In a report prepared for the hearing, DCFS advised that it had had no contact with Michael C. since June 22, 2000, when he called DCFS to advise that he had received notice of the June 23, 2000 hearing, and asked that it be continued. The social worker noted that additional efforts had been made to contact Michael C., but to no avail. The new DCFS social worker attempted to call him, but his telephone number had been disconnected. On July 24, 2001, the social worker mailed a notice to the Apperson Street address asking Michael C. to contact her. Michael C. did not respond. The social worker noted that a "due diligence" had been initiated. The results, however, had not been received as of the July 30, 2001 hearing.

On July 30, 2001, the juvenile court found that notice of the proceedings had been given to all appropriate parties as required by law. The court terminated family reunification services and set the matter for a section 366.26 hearing to select and implement a permanent plan for Whitney. Michael C.'s attorney did not object to the court's finding that notice was proper. At the direction of the court, the clerk of the court sent Michael C. an advisement of

his writ rights to his last known address in Tujunga, the same address to which DCFS had been sending Michael C. notice of the various hearings held in Whitney's case. This petition followed.

## **II. CONTENTION**

Michael C. claims that because there was a "total lack of effort on the part" of DCFS to notice him of the hearings in this case, he was denied procedural due process.

## **III. DISCUSSION**

Michael C. correctly asserts that parents are entitled to due process notice of juvenile proceedings affecting their interest in custody of their children. (*In re Melinda J.* (1991) 234 Cal.App.3d 1413, 1418.) As Michael C. contends, DCFS failed to notify him of the six-month, section 366.21, subdivision (e) hearing held on January 12, 2001. Failure to provide notice of the hearing was error. However, the record reflects that Michael C. was notified of the subsequent hearing held pursuant to section 366.21, subdivision (f), and that he failed to appear and object to his lack of notice of section 366.21, subdivision (e) hearing. We conclude, therefore, that Michael C. waived his right to notice of the section 366.21, subdivision (e) hearing. In any event, the prejudice he suggests he suffered from the lack of notice does not exist.

Michael C.'s claim that he did not receive notice of the 12-month, section 366.21, subdivision (f) hearing set for July 13, 2001, is simply not supported by the record. Michael C. contends that he did not receive notice of the hearing, and suggests that the lack of notice may be because a new social worker was assigned to the case on July 9, 2001. We reject the suggestion. Although the social worker may have been newly assigned to the case, the record is clear that DCFS notified Michael C. of the July 13, 2001, section 366.21, subdivision (f) hearing by mailing to him at the Apperson Street address a notice indicating that the hearing had been set for July 13, 2001.

Contrary to Michael C.'s assertion, there was no "total lack of effort" on the part of DCFS to keep Michael C. informed of the proceedings. The record shows that Whitney was detained on April 4, 2000. Shortly thereafter, DCFS obtained Michael C.'s pager number. The social worker spoke to him on one occasion, and left several messages, none of which

Michael C. returned. On May 18, 2000, DCFS discovered Michael C.'s two last known addresses. The juvenile court continued a hearing set for May 23, 2000, to June 23, 2000, to allow DCFS to send notices to Michael C. at his last known addresses. At least one of the notices was forwarded to Michael C. at his new address on Apperson Street. On June 22, 2000, one day prior to the date of the June 23, 2000 hearing, Michael C. contacted DCFS, advised the social worker of his new address, and requested a continuance of the hearing. The trial court granted the request and set the continued hearing for July 17, 2000. Although Michael was noticed for the hearing at the Apperson Street address, he failed to appear. At the conclusion of the July 17, 2000 hearing, the court set a section 366.21, subdivision (e) hearing for January 12, 2001. As Michael C. contends, he was not notified of this hearing. He was, however, properly noticed for the July 13, 2001 hearing. Again, Michael C. failed to attend.

What the record reflects is a complete lack of cooperation on the part of Michael C. Although he contacted DCFS on June 22, 2000, his contact after that date was virtually nonexistent. He did not respond to pages, did not appear for the July 17, 2000 hearing, did not advise DCFS that his telephone number had been disconnected, did not appear for the July 13, 2001 hearing, and did not respond to the July 24, 2001 contact letter sent to him by the social worker. Michael C.'s lack of interest in the proceedings prior to the time he received the juvenile court's notification of his right to file a writ petition suggests that he simply ignored any notices received by him pertaining to Whitney's dependency case.

Michael C. suggests that DCFS was obligated to ensure he received all his notices. To the contrary, Michael C., not DCFS had the duty to stay in touch. (§ 316.1, subd. (a) ["each parent . . . shall designate for the court his or her permanent mailing address."].) The court and DCFS are entitled to use an address given by a parent "unless and until the parent . . . notifies the court or the social services agency of a new mailing address in writing." (§ 316.1, subd. (a).) DCFS had no duty to track Michael C. continually throughout the dependency process. Where, as here, a parent has been identified, contacted by a social worker, apprised of the proceedings, and provided with counsel, the parent has the obligation to communicate with DCFS and to participate in the reunification process. (*In re Raymond R.* (1994) 26

Cal.App.4th 436; 441; accord *In re Larry P.* (1988) 201 Cal.App.3d 888, 894-895.) The record reflects that Michael C. was identified, contacted by a social worker, apprised of the case, and given an opportunity to participate in the hearings, an opportunity he rejected. Under these circumstances, we find no denial of due process.

**V. DISPOSITION**

Accordingly, the petition for writ of mandate is denied, and the order to show cause is dismissed.

NOT TO BE PUBLISHED.

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TODD, J.

We concur:

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BOREN, P.J.

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NOTT, J.